

AMENDED IN ASSEMBLY AUGUST 23, 2004

AMENDED IN ASSEMBLY AUGUST 9, 2004

AMENDED IN ASSEMBLY JULY 2, 2004

AMENDED IN SENATE APRIL 21, 2004

SENATE BILL

No. 1915

Introduced by ~~Committee on Business and Professions~~ (Senators ~~Figueroa~~ (Chair), ~~Brulte~~, ~~Cedillo~~, ~~Machado~~, ~~Murray~~, and ~~Vineent~~) *Senator Figueroa*

March 17, 2004

~~An act to amend Sections 144, 7069, 7090.1, and 7153.1 of the Business and Professions Code, relating to contractors, and declaring the urgency thereof, to take effect immediately. An act to repeal and add Section 2782 of the Civil Code, relating to indemnity.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1915, as amended, ~~Committee on Business and Professions Figueroa. Licensure and regulation~~ *Construction contracts: indemnification.*

Existing law generally provides that provisions, clauses, covenants, or agreements regarding construction contracts that purport to indemnify a promisee against liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, expense arising from the negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee or for defects in design furnished by those persons, are against public policy and are void and unenforceable, except as specified. Existing law also provides that

provisions, clauses, covenants, or agreements relating to construction contracts with a public agency that purport to impose on the contractor, or relieve the public agency from liability for the active negligence of the public agency, are void and unenforceable.

This bill would revise and recast those provisions to, among other things, apply to indemnitees rather than promisees. The bill would also provide that those provisions do not affect the validity of any workers' compensation insurance. The bill would specify that if a trier of fact determines that the damages are attributable to the indemnitee's sole negligence or willful misconduct, the indemnitor is entitled to full reimbursement of actual costs and attorney's fees in the course of providing a defense to the indemnitee. The bill would require an indemnitee who has been afforded a defense by an indemnitor to reimburse the indemnitor a percentage of costs and fees actually incurred by the indemnitor in that defense, equal to the indemnitee's percentage of negligence or willful misconduct. The bill would make related changes and would include a statement of legislative intent.

~~Existing law, the Contractors' State License Law, creates the Contractors' State License Board and makes it responsible, through its registrar, for the licensure and regulation of contractors. Under this law, a licensure applicant is required, effective July 1, 2004, to submit a set of fingerprints for the board to obtain criminal history information from the Department of Justice and the United States Federal Bureau of Investigation. This law provides for the automatic suspension of a license for specified causes and for its automatic revocation within one year if the license is not reinstated during that period.~~

~~This bill would require the board to obtain a licensure applicant's criminal history information from the Department of Justice only if sufficient funds are available to the board and department for this purpose. The bill would also change the period in which a suspended license may be reinstated from one year to 90 days, providing for its automatic revocation if not reinstated during the 90-day period.~~

~~This bill would incorporate additional changes in Section 144 of the Business and Professions Code, proposed by SB 1547, to be operative only if SB 1547 and this bill are both chaptered and become effective on or before January 1, 2005, and this bill is chaptered last.~~

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: ²/₃ majority. Appropriation: no. Fiscal committee: yes- no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

~~SECTION 1. Section 144 of the Business and Professions~~

SECTION 1. It is the intent of the Legislature to enact legislation to provide for the equitable resolution of construction defect claims and other claims and litigation and to address the availability and costs of liability insurance for builders, contractors, subcontractors, and material suppliers.

SEC. 2. Section 2782 of the Civil Code is repealed.

~~2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and which purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to such promisee, or for defects in design furnished by such persons, are against public policy and are void and unenforceable; provided, however, that this provision shall not affect the validity of any insurance contract, workers' compensation or agreement issued by an admitted insurer as defined by the Insurance Code.~~

~~(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.~~

SEC. 3. Section 2782 is added to the Civil Code, to read:

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract that require a person or that person's insurer to indemnify another against liability for damages arising out of death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from, in whole or in part, the negligence or the willful misconduct of the indemnitee or the indemnitee's agents, servants, or independent contractors who are directly or indirectly

1 responsible to the indemnitee, or for defects in design furnished by
2 those persons, are void against public policy and unenforceable.

3 (b) This section shall not affect the validity of any workers'
4 compensation insurance.

5 (c) Provisions, clauses, covenants, or agreements contained in
6 or collateral to a construction contract or additional insured
7 agreement that give rise to a duty to defend an indemnitee, where
8 liability for damages arises from the indemnitee's sole negligence
9 or willful misconduct, are against public policy and void and
10 unenforceable.

11 (d) If a trier of fact determines that the damages are
12 attributable to the indemnitee's sole negligence or willful
13 misconduct the indemnitor shall be entitled to full reimbursement
14 of actual costs and attorney's fees incurred in the course of
15 providing a defense to the indemnitee.

16 (e) An indemnitee who has been afforded a defense by an
17 indemnitor shall reimburse that indemnitor a percentage of costs
18 and fees actually incurred by the indemnitor in that defense, equal
19 to that indemnitee's percentage of negligence or willful
20 misconduct of that indemnitee.

21 (f) Except as provided in Sections 2782.1, 2782.2, and 2782.5,
22 provisions, clauses, covenants, or agreements contained in,
23 collateral to, or affecting any construction contract with a public
24 agency, or an additional insured endorsement issued in favor of
25 that public agency, which purport to impose on the contractor, or
26 relieve the public agency from, liability for the active negligence
27 of the public agency shall be void and unenforceable.

28 Code is amended to read:

29 ~~144. (a) Notwithstanding any other provision of law, an~~
30 ~~agency designated in subdivision (b) shall require an applicant to~~
31 ~~furnish to the agency a full set of fingerprints for purposes of~~
32 ~~conducting criminal history record checks. Any agency~~
33 ~~designated in subdivision (b) may obtain and receive, at its~~
34 ~~discretion, criminal history information from the Department of~~
35 ~~Justice and the United States Federal Bureau of Investigation.~~

36 ~~(b) Subdivision (a) applies to the following:~~

37 ~~(1) California Board of Accountancy.~~

38 ~~(2) State Athletic Commission.~~

39 ~~(3) Board of Behavioral Sciences.~~

40 ~~(4) Court Reporters Board of California.~~

- ~~(5) State Board of Guide Dogs for the Blind.~~
- ~~(6) California State Board of Pharmacy.~~
- ~~(7) Board of Registered Nursing.~~
- ~~(8) Veterinary Medical Board.~~
- ~~(9) Registered Veterinary Technician Committee.~~
- ~~(10) Board of Vocational Nursing and Psychiatric Technicians.~~
- ~~(11) Respiratory Care Board of California.~~
- ~~(12) Hearing Aid Dispensers Advisory Commission.~~
- ~~(13) Physical Therapy Board of California.~~
- ~~(14) Physician Assistant Committee of the Medical Board of California.~~
- ~~(15) Speech Language Pathology and Audiology Board.~~
- ~~(16) Medical Board of California.~~
- ~~(17) State Board of Optometry.~~
- ~~(18) Acupuncture Board.~~
- ~~(19) Cemetery and Funeral Bureau.~~
- ~~(20) Bureau of Security and Investigative Services.~~
- ~~(21) Division of Investigation.~~
- ~~(22) Board of Psychology.~~
- ~~(23) The California Board of Occupational Therapy.~~
- ~~(24) Structural Pest Control Board.~~
- ~~(25) Contractors' State License Board.~~
- ~~(26) Bureau of Naturopathic Medicine.~~

~~(e) The provisions of paragraph (24) of subdivision (b) shall become operative on July 1, 2004. The provisions of paragraph (25) of subdivision (b) shall become operative on the date on which sufficient funds are available for the Contractors' State License Board and the Department of Justice to conduct a criminal history record check pursuant to this section or on July 1, 2005, whichever occurs first.~~

~~SEC. 1.5. — Section 144 of the Business and Professions Code is amended to read:~~

~~144. — (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.~~

~~(b) Subdivision (a) applies to the following:~~

- 1 ~~(1) California Board of Accountancy.~~
- 2 ~~(2) State Athletic Commission.~~
- 3 ~~(3) Board of Behavioral Sciences.~~
- 4 ~~(4) Court Reporters Board of California.~~
- 5 ~~(5) State Board of Guide Dogs for the Blind.~~
- 6 ~~(6) California State Board of Pharmacy.~~
- 7 ~~(7) Board of Registered Nursing.~~
- 8 ~~(8) Veterinary Medical Board.~~
- 9 ~~(9) Registered Veterinary Technician Committee.~~
- 10 ~~(10) Board of Vocational Nursing and Psychiatric Technicians.~~
- 11 ~~(11) Respiratory Care Board of California.~~
- 12 ~~(12) Hearing Aid Dispensers Advisory Commission.~~
- 13 ~~(13) Physical Therapy Board of California.~~
- 14 ~~(14) Physician Assistant Committee of the Medical Board of~~
- 15 ~~California.~~
- 16 ~~(15) Speech-Language Pathology and Audiology Board.~~
- 17 ~~(16) Medical Board of California.~~
- 18 ~~(17) State Board of Optometry.~~
- 19 ~~(18) Acupuncture Board.~~
- 20 ~~(19) Cemetery and Funeral Bureau.~~
- 21 ~~(20) Bureau of Security and Investigative Services.~~
- 22 ~~(21) Division of Investigation.~~
- 23 ~~(22) Board of Psychology.~~
- 24 ~~(23) The California Board of Occupational Therapy.~~
- 25 ~~(24) Structural Pest Control Board.~~
- 26 ~~(25) Contractors' State License Board.~~
- 27 ~~(26) Bureau of Naturopathic Medicine.~~
- 28 ~~(27) Board for Professional Engineers and Land Surveyors.~~
- 29 ~~(e) The provisions of paragraph (24) of subdivision (b) shall~~
- 30 ~~become operative on July 1, 2004. The provisions of paragraph~~
- 31 ~~(25) of subdivision (b) shall become operative on the date on~~
- 32 ~~which sufficient funds are available for the Contractors' State~~
- 33 ~~License Board and the Department of Justice to conduct a criminal~~
- 34 ~~history record check pursuant to this section or on July 1, 2005;~~
- 35 ~~whichever occurs first.~~
- 36 ~~The provisions of paragraph (27) of subdivision (b) shall~~
- 37 ~~become operative on the date on which sufficient funds are~~
- 38 ~~available for the Board for Professional Engineers and Land~~
- 39 ~~Surveyors and the Department of Justice to conduct a criminal~~

1 ~~history record check pursuant to this section or on July 1, 2006,~~
2 ~~whichever occurs first.~~

3 ~~SEC. 2. Section 7069 of the Business and Professions Code~~
4 ~~is amended to read:~~

5 ~~7069. (a) An applicant and each officer, director, partner,~~
6 ~~associate, and responsible managing employee thereof, shall not~~
7 ~~have committed acts or crimes that are grounds for denial of~~
8 ~~licensure under Section 480.~~

9 ~~(b) As part of an application for a contractor's license, the~~
10 ~~board shall require an applicant to furnish a full set of fingerprints~~
11 ~~for purposes of conducting a criminal history record check.~~
12 ~~Fingerprints furnished pursuant to this subdivision shall be~~
13 ~~submitted in an electronic format if readily available. Requests for~~
14 ~~alternative methods of furnishing fingerprints are subject to the~~
15 ~~approval of the registrar. The board shall use the fingerprints~~
16 ~~furnished by an applicant to obtain criminal history information on~~
17 ~~the applicant from the Department of Justice and the United States~~
18 ~~Federal Bureau of Investigation, and the board may obtain any~~
19 ~~subsequent arrest information that is available. This subdivision~~
20 ~~shall become operative on the date on which sufficient funds are~~
21 ~~available for the board and the Department of Justice to conduct~~
22 ~~a criminal history record check pursuant to this subdivision or on~~
23 ~~July 1, 2005, whichever occurs first.~~

24 ~~SEC. 3. Section 7090.1 of the Business and Professions Code~~
25 ~~is amended to read:~~

26 ~~7090.1. (a) (1) Notwithstanding any other provisions of law,~~
27 ~~the failure to pay a civil penalty, or to comply with an order of~~
28 ~~correction or an order to pay a specified sum to an injured party in~~
29 ~~lieu of correction once the order has become final, shall result in~~
30 ~~the automatic suspension of a license by operation of law 30 days~~
31 ~~after noncompliance with the terms of the order.~~

32 ~~(2) The registrar shall notify the licensee in writing of the~~
33 ~~failure to comply with the final order and that the license shall be~~
34 ~~suspended 30 days from the date of the notice.~~

35 ~~(3) The licensee may contest the determination of~~
36 ~~noncompliance within 15 days after service of the notice, by~~
37 ~~written notice to the registrar. Upon receipt of the written notice,~~
38 ~~the registrar may reconsider the determination and after~~
39 ~~reconsideration may affirm or set aside the suspension.~~

~~(4) Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the cited license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.~~

~~(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the final order of the citation. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.~~

~~(b) The cited licensee shall also be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar, and the employment, election, or association of that person by a licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days of the date of disassociation. Upon failure to replace the qualifier within 90 days of the prohibition, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.~~

~~SEC. 4. Section 7153.1 of the Business and Professions Code is amended to read:~~

~~7153.1. (a) The home improvement salesperson shall submit to the registrar an application in writing containing the statement that he or she desires the issuance of a registration under the terms of this article.~~

~~The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.~~

~~(b) The registrar may refuse to register the applicant under the grounds specified in Section 480.~~

~~(c) As part of an application for a home improvement salesperson, the board shall require an applicant to furnish a full~~

1 set of fingerprints for purposes of conducting criminal history
2 record checks. Fingerprints furnished pursuant to this subdivision
3 shall be submitted in an electronic format where readily available.
4 Requests for alternative methods of furnishing fingerprints are
5 subject to the approval of the registrar. The board shall use the
6 fingerprints furnished by an applicant to obtain criminal history
7 information on the applicant from the Department of Justice and
8 the United States Federal Bureau of Investigation, including any
9 subsequent arrest information available. This subdivision shall
10 become operative on the date on which sufficient funds are
11 available to the board and the Department of Justice to conduct a
12 criminal history record check pursuant to this subdivision or on
13 July 1, 2005, whichever occurs first.

14 SEC. 5. This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety
16 within the meaning of Article IV of the Constitution and shall go
17 into immediate effect. The facts constituting the necessity are:

18 In order for the Contractors' State License Board to continue to
19 adequately and properly ensure the protection of the public in its
20 licensure and regulation of contractors, it is necessary that this act
21 take effect immediately.

22 SEC. 6. Section 1.5 of this bill incorporates amendments to
23 Section 144 of the Business and Professions Code proposed by
24 both this bill and SB 1547. It shall only become operative if (1)
25 both bills are enacted and become effective on or before January
26 1, 2005, but this bill becomes operative first, (2) each bill amends
27 Section 144 of the Business and Professions Code, and (3) this bill
28 is enacted after SB 1547, in which case Section 144 of the Business
29 and Professions Code, as amended by Section 1 of this bill, shall
30 remain operative only until the operative date of SB 1547, at which
31 time Section 1.5 of this bill shall become operative.

